

HOUSE BILL 119

By Shepard

AN ACT to amend Tennessee Code Annotated, Title 50  
and Title 68, to enact the "Tennessee Smokefree  
Air Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding Sections 2 through 18 of this act as a new, appropriately designated part.

SECTION 2. This act shall be known and may be cited as the "Tennessee Smokefree Air Act".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages or beer for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets;

(2) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs;

(3) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity;

(4) "Employer" means a person, business, partnership, association, corporation, including a municipality, trust, government entity, or non-profit entity that employs the services of one or more individual persons;

(5) “Enclosed area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling;

(6) “Medical facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and any other facilities licensed pursuant to title 68, and offices of any medical professional licensed pursuant to title 63. This definition includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within medical facilities or medical offices;

(7) “Municipality” includes an incorporated city, county and metropolitan government;

(8) “Place of employment” means an area under the control of a public or private employer in which two (2) or more individuals perform any type of a service for consideration of payment under any type of employment relationship. Place of employment includes any location where two (2) or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a place of employment include but are not limited to, public conveyances, taxi cabs, limousines, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, conference rooms, meeting rooms, classrooms, rooms or areas containing photocopying equipment or other office equipment used in common, vehicles owned or leased by a company, government-

owned vehicles, or any similar place of employment. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or medical facility. A private vehicle is not a “place of employment” unless it is driven by a person employed by the individual who owns the vehicle;

(9) “Private club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages or beer incidental to its operation; the affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting; the organization has established bylaws and/or a constitution to govern its activities; and the organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501;

(10) “Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, medical facilities, hotels and motels, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a “public place” when being used for a function to which the general public is invited. A private residence is not a “public place” unless it is used as a child care, adult day care, or medical facility;

(11) “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which give or offers for sale food to the public, guests, or employees, as well as kitchens

and catering facilities in which food is prepared on the premises for serving elsewhere.

The term “restaurant” includes a bar area within the restaurant;

(12) “Service line” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(13) “Shopping mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(14) “Smoking” means inhaling, exhaling, burning, carrying or otherwise possessing any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form;

(15) “Sports arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

SECTION 4. All enclosed facilities, including buildings and vehicles owned, leased, or operated by employers shall be subject to the provisions of this act.

SECTION 5. Smoking is prohibited in all enclosed public places within this state including but not limited to, the following places:

(1) Aquariums, galleries, libraries, and museums;

(2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, banks, financial institutions, laundromats, professional offices, and retail service establishments;

(3) Bars;

(4) Child care and adult day care facilities;

(5) Convention facilities;

- (6) Educational facilities, both public and private;
- (7) Elevators;
- (8) Medical facilities;
- (9) Hotels and motels;
- (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (11) Polling places;
- (12) Private clubs when being used for a function to which the general public is invited;
- (13) Public transportation facilities, including railroads, buses, taxicabs and limousines, and ticket, boarding, and waiting areas of public transit depots;
- (14) Restaurants;
- (15) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (16) Retail stores;
- (17) Rooms, chambers, places of meeting or public assembly, including public and private school buildings;
- (18) Service lines;
- (19) Shopping malls;
- (20) Sports arenas, including enclosed places in outdoor arenas; and
- (21) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

## SECTION 6.

(a) Smoking is prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(b) This prohibition on smoking shall be communicated by all existing employers to all existing employees prior to January 1, 2008, and to all prospective employees upon their application for employment. All new employers shall communicate this prohibition on smoking to all prospective employees upon their application for employment.

SECTION 7. Smoking is prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

SECTION 8. Smoking is prohibited within a reasonable distance of twenty (20) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

SECTION 9. Notwithstanding any other provision of this act to the contrary, the following areas shall be exempt from the provisions of Sections 6, 7 and 8:

(1) Private residences, except when used as a childcare, adult day care, or medical facility.

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this act. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(3) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this act.

(4) Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this act.

(5) Outdoor areas of places of employment except those covered by the provisions of Sections 7 and 8.

SECTION 10. Notwithstanding any other provision of this act, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking is prohibited in any place in which a sign conforming to the requirements of Section 11 is posted.

#### SECTION 11.

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this act, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this act shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this act by the owner, operator, manager, or other person having control of the area.

## SECTION 12.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this act or reports or attempts to bring a legal action for a violation of this act.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

## SECTION 13.

(a) This act shall be enforced by department of health with respect to the prohibition against smoking in a public place and by the department of labor and workforce development with respect to the prohibition against smoking in places of employment.

(b) Notice of the provisions of this act shall be given to all applicants for a business license pursuant to Tennessee Code Annotated, Title 67, Chapter 4, Part 7.

(c) Any citizen who desires to register a complaint under this act may initiate enforcement with either department of health or the department of labor and workforce development, as appropriate.

(d) Any mandated inspection by state law of an establishment shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this act.

(e) An owner, manager, operator, or employee of an establishment regulated by this act shall inform persons violating this act of the appropriate provisions thereof.

(f) Notwithstanding any other provision of this act, an employee or private citizen may bring legal action to enforce this act.

(g) In addition to the remedies provided by this act, the commissioner of the department of health or the department of labor and workforce development, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this act may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(e) The commissioner of the department of health and the commissioner of the department of labor and workforce development are authorized to promulgate rules to effectuate the provisions of this act in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5.

#### SECTION 14.

(a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this act shall be subject to a civil fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this act shall be subject to a civil fine:

(1) Not exceeding one hundred dollars (\$100) for a first violation;

(2) Not exceeding two hundred dollars (\$200) for a second violation within one (1) year; or

(3) Not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) In addition to the fines established by this section, a knowing violation of this act by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each day on which a knowing violation of this act occurs shall be considered a separate and distinct violation.

SECTION 15. The department of health in conjunction with the department of labor and workforce development shall engage in a continuing program to explain and clarify the purposes and requirements of this act to citizens affected by it, and to guide owners, operators, and managers of places of employment in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this act.

SECTION 16. The commissioners of the departments of health and labor and workforce development shall annually request other governmental and educational agencies within the state to establish local operating procedures in cooperation and compliance with this act. This includes urging all municipalities and local education agencies to update any existing smoking control regulations or policies to be consistent with the current health findings regarding secondhand smoke.

SECTION 17. This act shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 18. This act shall be liberally construed so as to further its purposes.

SECTION 19. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 20. For purposes promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. Section 6 of this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2008, the public welfare requiring it.

